

## GUEST EDITORIAL

# The Global Settlement — A Global View

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The global settlement recently agreed to by the U.S. tobacco industry, numerous state attorneys general, and two public health negotiators is, in fact, a settlement for the United States. Its most serious deficiency is a complete failure to consider the possibility that the U.S. tobacco industry might have to enter a deal in the U.S. to behave in other countries as it is willing to agree to behave in the U.S. This is global irresponsibility. This aside, the fact that the industry has come to discussions seeking a settlement is of enormous significance from several points of view.

First it indicates an industry worried that it is about to suffer a serious defeat, or perhaps series of defeats, on its own home territory. It seeks to settle, by agreeing to both legislation and “a binding, enforceable, contractual, protocol” which will usher in a “new regime” under which the way it markets its products changes, in the U.S. at least, permanently. It will also pay sums of \$10–15 billion dollars annually for the purpose of funding the states, funding public education programs, cessation programs, tobacco related medical research, the costs of Federal Drug Administration supervision, and some funding for replacement of its own sponsorship over a decade. Further it pays penalties if youth smoking does not diminish as hoped. These penalties seem large but are quite affordable to an industry with huge cash flow.

The tobacco industry is doing this to achieve immunity from further court cases brought by individual states or the federal government, from class actions and from the threat of punitive damages, which are deemed resolved by this settlement. Thus the industry will be safe from bankruptcy, will face a stable environment in the U.S., and, will continue to make large profits as the costs can be readily carried by increasing the price of cigarettes, which is extremely low in the U.S., by the standards of Europe, due to low taxes.

There is nothing which indicates any immunity from charges which might arise from sworn testimony given to Congress by senior executives to the effect that nicotine is not addictive. So the possibility of punishment of some

people seen by the public health establishment as guilty still exists.

To quote “the tobacco industry . . . acknowledge the predominant public health positions associated with the use of tobacco products”. This phrase precedes the section which spells out these positions which will become warning labels on the cigarette packet. It seems therefore that Marlboro is now acknowledged by Philip Morris as causing cancer and fatal lung disease in non-smokers, along with all the rest of the well known diseases. While this agreement has been made in the U.S. it will be understood in the rest of the world and cannot realistically be retracted even if the legislation is not forthcoming, as it has been published.

The settlement makes the FDA task of regulation harder than is sensible but President Clinton emerged from a meeting of NATO to discard this possibility [1], so the FDA will probably be given the task of regulating this maverick industry and the power and money to do it. Regardless of whether the settlement becomes law, the existence of an agreement to agree implies:

- The tobacco industry will have reduced influence and ability to influence legislation.
- The facts relating tobacco to disease are no longer a cause for debate.

If the settlement goes into effect other benefits arise:

- Research aimed at reducing the currently disastrous carcinogenicity/toxicity of the cigarette, by the industry, can proceed in public under the eye of the FDA and the National Cancer Institute, among others. Cross licensing will occur in the event of useful discoveries.
- Such research can now be directed towards less dangerous products rather than towards reducing yields as

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measured by the outdated Federal Trade Commission method. This is a genuine benefit although it will not lead to a safe cigarette.

- Marketing tactics will be less effective even though the promotional restrictions are not complete or as effective as those in Scandinavia.
- The price effects will reduce consumption.
- The youth access restrictions may be effective—this is an experiment which has not been seriously tried elsewhere.

What will be the effect on tobacco consumption trends? Undoubtedly the settlement, the publicity surrounding it, the marketing changes and the proposed public education and cessation programs, and the price effects, will push the trend lines further down. If the cessation programs are implemented effectively, the reduction in mortality rates, obvious in males and emerging in younger females, will continue. The future of youth smoking is harder to predict as there are very few models on which to rely. The current experience in Massachusetts is encouraging, as in California, but the messages to be derived are that large scale expensive efforts

are needed and they need to be devoid of political interference—which does not seem to be the case in California [2].

So this settlement is a good experiment. It is a public health experiment instead of an industry experiment. But an experiment it is. It should be watched with care and the public health establishment given time and money to develop the effective strategies they have never been given the opportunity to try. If the resolve in the White House is maintained this should be possible.

Finally, if the settlement collapses we should remember that the tobacco industry is still in deep trouble in the courts and their litigation problems will inevitably lead to public health benefits, certainly more slowly, unpredictable in nature, but possibly even greater. Their executives will sleep less easily under these circumstances and this seems no less than just.

Whichever way things go the public health will benefit.

## REFERENCES

1. Anon. *The Independent* (London), July 14, 1997.
2. Adelson, A., *New York Times*, July 17, 1997, p. D1.